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OFFICE OF PETITIONS

In re Application of :
Desnoyers et al. : DECISION ON APPLICATION
Application No. 10/036,041 : FOR
Filed: December 26, 2001 : PATENT TERM ADJUSTMENT
Atty Docket No. P3030R1C8 :

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705," filed July 25, 2005. Applicants request that the determination of patent term adjustment (PTA) under 35 U.S.C. 154(b) be corrected from 15 days to 272 days. In part, applicants request this correction on the basis that the Office has failed to issue the patent within three years of the application filing date.

To the extent that the instant application for patent term adjustment requests reconsideration of the patent term adjustment at the time of the mailing of the notice of allowance as it relates to the Office's failure to issue the patent within 3 years of the filing date, a decision is being held in abeyance until after the actual patent date. Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentee is entitled to for Office failure to issue the patent within 3 years. See § 1.703(b).

Patentees are given **TWO (2) MONTHS** from the issue date of the patent to file a written request for reconsideration of the patent term adjustment for Office failure to issue the patent within 3 years. A copy of this decision should accompany the request. Patentees may seek such consideration without payment of an additional fee. However, as to all other bases for seeking reconsideration of the patent term adjustment indicated in the patent, all requirements of § 1.705(d) must be met. Requests for reconsideration on other bases must be timely filed and must include payment of the required fee.

To the extent that the application for patent term adjustment at the time of the mailing of the notice of allowance is being reconsidered, the application for patent term adjustment is **DISMISSED**.

On April 26, 2005, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment to date is 15 days. Applicants dispute the entry of a period of reduction of 82 days for applicants' filing of a supplemental response on November 24, 2004. Applicants contend that the response was expressly requested by the examiner, and thus, no reduction pursuant to 1.704(c)(8) is warranted.

The record has been reviewed and it has been determined that the record does not support a conclusion that the supplemental amendment was expressly requested by the examiner within the meaning of 1.704(c)(8). Accordingly, the reduction of 82 days is warranted.

In view thereof, 15 days is the correct determination of patent term adjustment at the time of the mailing of the Notice of Allowance.

The Office acknowledges submission of the \$200.00 fee set forth in 37 C.F.R. 1.18(e). No additional fees are required.

The Office of Patent Publication has been advised of this decision. The application is, thereby, forwarded to the Office of Patent Publication for issuance of the patent.

Telephone inquiries specific to this matter should be directed to Nancy Johnson, Senior Petitions Attorney, at (571) 272-3219.

Kery A Fries

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